

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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4 Jamar Hunter,

5 Plaintiff,

6 v.

7 Officer B. Wood #17066, et al.,

8 Defendants.
9

Case No. 2:24-cv-00420-GMN-BNW

REPORT AND RECOMMENDATION

10 On January 30, 2025, this Court ordered Plaintiff to file an amended complaint by March
11 6, 2025. ECF No. 4. It warned Plaintiff that failure to do so would result in a recommendation
12 that the case be dismissed. *Id.* Plaintiff did not file an amended complaint by the deadline, so this
13 Court issued another minute order. ECF No. 6. It again ordered Plaintiff to file an amended
14 complaint and warned him that failure to comply would likely result in a recommendation to
15 dismiss the case. *Id.*

16 In addition, on March 31, 2025, this Court received notice that Plaintiff's mail was
17 returned as undeliverable. ECF No. 7. This Court promptly issued a minute order directing
18 Plaintiff to update his address by April 17, 2025, and warned him that failure to do so may result
19 in dismissal of his case. ECF No. 8. This Court directed the Clerks' Office to mail a copy of the
20 minute order to the Plaintiff. *Id.* That mailed minute order was also returned as undeliverable.
21 ECF No. 9. Despite numerous warnings, Plaintiff has neither filed an amended complaint nor
22 updated his address, and the deadlines to do so have passed. As a result, this Court recommends
23 that this case be dismissed without prejudice.

24 The law permits a district court to dismiss an action based on a party's failure to prosecute
25 his case or comply with a court order. *See Hells Canyon Preservation Council v. U.S. Forest*
26 *Serv.*, 403 F.3d 683, 689 (9th Cir. 2005) (recognizing that courts may dismiss an action pursuant
27 to Federal Rule of Civil Procedure 41(b) sua sponte for a plaintiff's failure to prosecute or comply
28 with the rules of civil procedure or the court's orders). In determining whether to dismiss an

1 action, the court must consider: (1) the public’s interest in expeditious resolution of litigation; (2)
2 the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public
3 policy favoring disposition of cases on their merits; and (5) the availability of less drastic
4 alternatives. *In re Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006)
5 (quoting *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987)).

6 The first two factors, the public’s interest in expeditiously resolving this litigation and the
7 court’s interest in managing its docket, weigh in favor of dismissing Plaintiff’s claims. The third
8 factor, risk of prejudice to defendants, also weighs in favor of dismissal because a presumption of
9 injury arises from the occurrence of unreasonable delay in filing a pleading ordered by the court
10 or prosecuting an action. *See Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth
11 factor—the public policy favoring disposition of cases on their merits— weighs against dismissal.

12 The fifth factor requires the court to consider whether less drastic alternatives can be used
13 to correct the party’s failure that brought about the court’s need to consider dismissal. Courts
14 “need not exhaust every sanction short of dismissal before finally dismissing a case, but must
15 explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th
16 Cir. 1986). Because Plaintiff has failed to file an amended complaint, despite two court orders to
17 do so, the only alternative is enter a third order directing Plaintiff to prosecute his case. In
18 addition, because Plaintiff has failed to update his address, despite a court order to do so, the only
19 alternative is to enter another order. The circumstances here do not indicate that Plaintiff needs
20 additional time, and this case cannot proceed without an operative complaint. Setting another
21 deadline is not a meaningful alternative given these circumstances. So, the fifth factor favors
22 dismissal.

23 In balance, the factors above favor a recommendation of dismissal. *See Hernandez v. City*
24 *of El Monte*, 138 F.3d 393 (9th Cir. 1998) (holdings dismissal is proper where least four factors
25 support dismissal or where at least three factors “strongly” support dismissal).


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NOTICE

DATED: May 2, 2025


BRENDA WEKSLER
UNITED STATES MAGISTRATE JUDGE